

AGENCY FOR THE PROTECTION OF THE RIGHT TO FREE ACCESS TO PUBLIC  
INFORMATION

1059.

Based on Article 34 paragraph (1) paragraph (6) of the Law on Free Access to Public Information ("Official Gazette of the Republic of North Macedonia" no. 101/2019), the Director of the Agency for the Protection of the Right to Free Access to Public Information passed the following

INSTRUCTION  
FOR THE ENFORCEMENT OF THE LAW ON FREE  
ACCESS TO PUBLIC INFORMATION

I. GENERAL PROVISIONS

Article 1

This Guideline determines in more detail the way to implement the provisions of the Law on Free Access to Public Information ("Official Gazette of the Republic of North Macedonia" number 101/2019) (hereinafter: the Law). The purpose of this Instruction is to, in accordance with the Law, allow natural and legal persons to exercise the right to free access to public information and to ensure publicity and openness in the operation of state government bodies and other bodies and organizations determined by law, municipal bodies, the city of Skopje and the municipalities in the city of Skopje, institutions and public services, public enterprises, legal and natural persons exercising public powers established by law and activities of public interest and political parties in the area of income and expenditure (hereinafter text: Holders of information), who are obliged to provide information to the public. These Guidelines are implemented in accordance with the basic principles of the Law on General Administrative Procedure (hereinafter: LGAP)

Article 2

This Instruction provides a simplified application of the provisions of the Law by:

- Holders of public information
- Requesters of public information
- The director and deputy director of the Agency for the Protection of the Right to Free Access to Public Information
- The administrative officers employed in the Agency.

II. REQUEST FOR ACCESS TO PUBLIC INFORMATION

### Article 3

The procedure for access to public information is considered to be initiated by submitting a request by the requester to the holder of information. The applicant may request access to the information orally, in writing or in an electronic record, whereby the request submitted in electronic form is considered a written request. The requester is obliged in the request to pronounce on the method of further communication with the holder of the information and that verbally, in written form or in electronic form.

When the requester submits the written request directly to the holder of information (in the holder's archive), then he should have a copy of the request on which the holder will put a receipt stamp with the date of receipt and archive number, which copy of the request is returned to the requester, and if there is no copy, he is given a certificate of certified receipt of the request, as proof of receipt. Delivery of the request can also be confirmed by signing a delivery book.

When the Request is submitted in written form and its delivery is done by mail, it must be by registered letter with a return receipt. The delivery is considered proper if the holder confirms the receipt and the date of receipt of the request with his own signature, and the postal service will return the return receipt to the requester.

The specified method of delivery is important for both the requester and the holder because, from the day of delivery of the request to the holder, the deadline for acting on it begins.

If the request is submitted in electronic form (via e-mail), the holder is obliged to record it in the register for receipt of requests on the day when the electronic delivery is made, and the requester is obliged to provide confirmation that the electronically submitted request has been received by the holder. The procedure following the request in this case continues as if it was submitted in writing, and the submission of the requested information should be in the form specified in the request.

In case the request is submitted by an authorized proxy, a proper power of attorney should be attached to the request.

The requester can gain access to the requested information by inspection, request a transcript, photocopy or electronic record.

The holder of the information is obliged to help the requester in exercising his rights during the entire procedure for access to information of a public nature.

### Oral request

#### Article 4

When the requester requests access to certain information with an oral request, the holder of the information, if he responds positively to the request, is obliged immediately, and no later than within 5 days from the day of submission of the request, to enable the requester to familiarize himself with the content of the requested information through insight, pre-text, photocopy or electronic record of the requested information.

If the holder of the information responds negatively to the request or cannot immediately respond to the request, as well as if the requester has a verbal or written objection to the way of getting to know the information, the official person for mediating information is obliged to prepare a solution for the request, which, among other things it should contain information about the requester and the date of receipt of the request.

With the decision from paragraph (2) of this article, the official is obliged to inform the applicant about the special request, that is, about the requested information. When refusing the oral request, the further procedure continues as after a written request in accordance with the Law and this Instruction.

## Written request

### Article 5

The request can be submitted on a form prescribed by the director of the Agency or on an ordinary submission that should contain the following data:

- Name of the holder of the information
- The personal name and surname of the requester of the information
- Data on the possible representative or authorized person, company or legal entity.

In order to facilitate the obligation to submit a request, the form of the written request is prescribed in the Rulebook on the form and content of the form of the request for access to public information, which is available on the Agency's website.

The written request is submitted to the holder of the information, who decides on the same in a procedure established in the Law. For the issues of the written request procedure that are not regulated by the Law, the provisions of the LGAP are applied.

## Supplementing the request

### Article 6

If the request is incomplete, due to which the holder cannot act on it, he will ask the requester to complete the request, indicating the consequences if he does not do so within 3 (three) days from the day of receiving the notification.

If the requester does not supplement the request within the specified period, the holder of information will make a decision to reject the request.

If the request does not meet the requirements of Article 16 of the Law even after the amendment, the holder will reject the request with a decision.

The holder, i.e. the official person for mediating information, is obliged to help the requester when supplementing the request, as well as when identifying the requested information.

## Forwarding the request

### Article 7

If the holder of the information who received the request does not have the requested information immediately, and at the latest within three days from the day of receipt of the request, he is obliged to forward the request to the holder of information who, according to the content of the request, is the holder of the information and for the applicant is obliged to notify it.

The deadline for obtaining the information starts from the day of receipt of the request by the holder of the information to whom the request was forwarded.

## III. PROCEEDING UPON REQUEST

### Article 8

The holder of information is obliged to respond to the request for access to information. The "silence of the administration" should be avoided and it must not be abused in any case.

The holder of the information:

- can respond positively to the request, in accordance with the provisions of Article 24 of the Law or
- may reject the request in whole or in part, in accordance with Article 25 of the Law.

In the cases referred to in paragraph (2) subparagraphs 1 and 2 of this article, the holder shall make a decision.

## Availability of information

### Article 9

The applicant has the right to access any public information that does not fall under the exceptions of Article 6 paragraph (1) of the Law and the protection of interests formulated therein.

Refusal of access to information is an exception to the rule in paragraph (1) of this Guideline, and the same is implemented only if the mandatory test of harmfulness determines greater damage to the interest that is protected in case of publication of the information.

Form for providing the requested information

#### Article 10

The holder of the information provides the information in the requested form. An exception to this rule is if the requested information already exists in a predetermined form and is available to the public.

If the holder determines that it is more favourable and faster for the requester to provide the requested information in a different form than the requested one, the holder can contact the requester and jointly agree on the form of the requested information, after which the holder will provide the requested information in the agreed form and explain the reason for this method of delivery.

Deadline for action

#### Article 10

The holder of the information is obliged to respond to the request immediately, that is, no later than 20 days from the receipt of the request.

The response deadline can be extended to a maximum of 30 days only when the requested information is extensive, or when the requester is given partial access to the requested information in accordance with Article 6 paragraph (4) of the Law. For the extension of the deadline, the holder is obliged to inform the applicant immediately, and at the latest within seven days of receiving the request.

Requests answered

#### Article 11

If the requester has already received a positive response for access to certain information, and within three months submits the same or similar request to the same holder of information, the holder is not obliged to respond to the request again but is obliged to inform the requester that it has already been answered at his request.

Delivering a response to requested information

#### Article 12

If the requester requests to be given the requested information for inspection, the holder of the information is obliged to call the requester to perform the requested inspection in appropriate room of the holder of information, in a suitable period of time, that is, within the working hours of the holder of information, allowing him enough time to familiarize himself with its content. For the performed inspection, the official keeps a record which is signed by him and the applicant.

An official who enables the inspection is obliged to take measures to ensure that the inspection is not misused in the manner established in Article 65 paragraph (5) of the Law on General Administrative Procedure.

When the requester receives the requested information, but it results in a request for additional information related to documents created or owned by the holder of the information, the requester should submit a new request, together with the answer he has already received.

When the applicant considers that he was provided with other information than the one stated in the request, then the applicant should submit a new request, and the holder is obliged to act on the new request within 10 days of its receipt.

If the holder does not act upon the repeated request, the requester may file a appeal with the Agency within 15 days after the expiration of the period from paragraph (4) of this article.

#### Rejection of the request

##### Article 13

When making a decision for full or partial rejection of the request, according to Article 6 of the Law, the holder of information should give an explanation of the reasons for which the request was completely or partially rejected in the decision.

The official is obliged to carry out the harm test as a mandatory procedure before denying access to information, in order to determine that in the specific case, with the publication of the requested information, the consequences on the interest to be protected are greater than the public interest established by law.

The official is obliged to state the Harm Test carried out in the operative part of the decision, and the explanation of the decision must contain:

- indication of the exception that protects a certain interest, in accordance with Article 6 paragraph (1) of the Law and
- explanation of the specific facts that led to the conclusion that the publication of the information will damage, that is, cause a significant injury to the protected interest.

#### Handling of the administration's silence

##### Article 14

If the holder of the information does not give the requester access to the information within 20 days, i.e. 30 days, and if he does not make and deliver to the requester a decision on refusal, nor requests an extension of the deadline, it is considered that the request has been refused, after which the applicant can submit a appeal to the Agency within 15 days, after the expiration of the 20-day period.

#### IV. APPEAL PROCEDURE

##### Article 15

Only the applicant who has submitted a request for access to public information has the right to legal protection, that is, the right to file a appeal.

The applicant can submit the appeal through the holder or directly to the Agency, by mail or electronically.

The applicant has the right to file a appeal in the following cases:

- against the decision with which the holder of the information responded positively to the request;
- against the decision by which the holder of the information rejected the request in whole or in part;
- against the decision by which the holder rejected the request that the applicant did not supplement within the stipulated period;

- against the decision by which the holder rejects the appeal as inadmissible, untimely or declared by an unauthorized person by the holder of the information, in accordance with Article 16 paragraph (2) of this Instruction;
- against the decision from Article 16 paragraph (4) of this Instruction and
- if the holder of the information, within 20, i.e. 30 days in case the deadline is extended, i.e. 10 days in the case of a repeat request, did not provide the requester with access to the information and if he did not make and deliver to the requester a solution for full or partial denial of access (silence of the administration).

In the cases from paragraph (3) indent 1 to 5 of this article, the deadline for filing an appeal is 15 days from the day of receipt of the decision, and in the case from paragraph (3) indent 6 of this article, the deadline for submission is 15 days from the day when the respective deadlines of 20, i.e. 30 days in the case of extension of the deadline, i.e. 10 days in the case of a new request, end.

#### Article 16

When the requester submits the appeal through the information holder, the holder is obliged to investigate within seven days whether the appeal is admissible, timely and declared by an authorized person.

The holder will reject the inadmissible, untimely or unauthorized person's appeal with a decision, for which he is obliged to notify the Agency in electronic form within seven days.

Against the decision rejecting the appeal based on paragraph (2) of this article, the applicant has the right to appeal. If the Agency decides on the appeal and finds that the appeal is justified, it will simultaneously decide on the appeal that was rejected.

When the holder determines that the appeal is admissible and fully justified, he will replace the decision contradicting the appeal with a new decision and within seven days of receiving the appeal will submit the decision to the Agency in electronic form. The party has the right to appeal against the new decision.

When the holder determines that the appeal is allowed and not fully justified, he will send the appeal to the Agency in electronic form without delay, and at the latest within seven days, together with all the documents related to the case and the response to the appeal.

If in case of silence of the administration, the holder does not made a decision within seven days from the receipt of the appeal, he shall without delay send the appeal to the Agency in electronic form together with all documents and a written explanation of the reasons why he did not issue the requested decision within seven days.

In the cases referred to in paragraph (3), paragraph (4) and paragraph (6) of this article, the deadline for acting on the appeal begins to run from the day of receipt of the appeal at the Agency.

#### Content of the appeal

#### Article 17

The appeal should contain the following elements:

- title, name, address, telephone, zip code, e-mail of the requester;
- title, name, address, phone, zip code, and e-mail of the holder of information.
- explanation of the reasons why the applicant is not satisfied with the decision (or its non-decision).

If an appeal is filed against a decision made by an information holder, the request, the contested decision, and proof of receipt of the contested decision shall be attached to the appeal.

In case of the silence of the administration, the request submitted by the requester, but for which the requester did not receive a response from the holder of information, as well as proof that the

request was submitted and received by the holder of information, shall be attached to the appeal.

According to the completeness of the documents and attachments from paragraph (1), (2) and (3) of this article, when considering the appeal, the Agency:

- may submit the appeal to the appointed holder of the information in accordance with Article 107 of the LGAP
- can decide on its own, that is, act on the appeal in accordance with Article 109 of the LGAP.

#### Submission of the appeal

##### Article 18

If the appeal does not contain all the elements from Article 17 of these Guidelines, the Agency is obliged, the next day after receiving the appeal, to deliver it in electronic form to the holder of information designated in the appeal and to request from the holder within 7 days to examine whether the appeal is admissible, timely and declared by an authorized person.

If the appeal is handed over and sent directly to the holder from paragraph (1) of this article, he will examine within 7 days whether the appeal is admissible, timely and declared by an authorized person.

If the appeal is inadmissible, untimely or if it was filed by an unauthorized person, the holder will make a decision in accordance with Article 16 paragraph (2) of these Guidelines. According to this decision, the applicant has the right to appeal to the Agency within 15 days of the receipt.

When the holder from paragraph (1) of this article determines that the appeal is admissible and fully justified, he will replace the decision contradicted by the appeal with a new one.

decision and within 7 days from the receipt of the appeal in electronic form will submit the decision to the Agency. The authorized applicant has the right to appeal against the new decision.

When the holder from paragraph (1) of this article determines that the appeal is admissible and not fully justified, he shall send the appeal to the Agency in electronic form without delay, and at the latest within 7 days, together with all the documents from the subject. and response to the appeal.

#### Action on appeal

##### Article 19

The Agency, as a secondary authority, decides on the applicant's appeal within 15 days from the day of receipt of the appeal.

Acting on the appeal, the Agency, with a decision, can:

- To reject it as inadmissible, untimely, or declared by an unauthorized person;
- To respect it and instruct the holder to act in accordance with the Law;
- To reject it as unfounded;
- To respect and oblige the holder to provide the requested information;
- To respect it and to return the matter to the first-instance authority for further proceedings;
- To stop the procedure.

##### Article 20

If the appeal contains all the elements from Article 16 of these Guidelines, the Agency, after receiving the appeal, checks whether it is admissible, timely and declared by an authorized person.

If the Agency determines that the appeal is inadmissible, untimely or filed by an unauthorized person, it will reject the appeal with a decision.

In case of silence of the administration, the Agency will respect the appeal and instruct the holder to act in accordance with the Law.

The Agency may reject the appeal or uphold the appeal and annul the holder's decision in whole or in part, or modify it.

The Agency will reject the appeal when it determines that the procedure that preceded the decision was carried out correctly that the decision is correct and based on the Law, and that the appeal is unfounded.

The Agency will also reject the appeal when it finds that there were flaws in the first instance procedure, but that they were such that they could not have an impact on the resolution of the case.

When the Agency finds that the first-level decision made by the holder of information is based on the law for reasons other than those stated in the decision, the Agency will state those reasons in its decision and will reject the appeal.

If the Agency determines that an irregularity has been committed in the first-level proceedings following the request for access to information, which renders the decision null and void, it will announce such a decision as null and void, as well as the part of the procedure that was carried out following that irregularity.

When the Agency determines that the facts were incompletely or incorrectly determined in the first instance procedure, that the rules of the procedure were not taken into account in the procedure that would have an impact on the resolution of the case, or that the dispositive of the contested decision is unclear or contradicts the reasoning, the Agency with its own decision will annul the first instance decision and return the matter to the holder of information for re-trial. In that case, the Agency is obliged with its decision to indicate to the holder of information in which respect the procedure should be supplemented, and the holder of information is obliged to act in everything according to the secondary decision and without delay, and at the latest within 15 days from on the day of receipt of the case, to make a new decision. The party has the right to appeal against the new decision.

The Agency can return the same object to the holder of information only once, regardless of the reasons or omissions in the first instance procedure.

When the Agency acts on a stated appeal against a decision that was once annulled and returned for re-settlement, acting on the appeal, it is obliged to resolve the matter itself.

The holder of the information is obliged to implement the decision of the Agency from paragraph (11) of this article.

If the Agency determines that the evidence was wrongly evaluated in the first-level decision, that a wrong conclusion was drawn from the established facts in relation to the factual situation, that the legal regulation on the basis of which the case is decided was incorrectly applied, or if it finds that based on a free assessment it should have to make a different decision, it will cancel the first instance decision with its own decision and solve the matter by itself.

#### Duty of the holder of information

#### Article 21

The holder of the information is obliged to act in full according to the directions given in the Agency's decision by which the appeal was accepted and the matter was returned for solving.

When the holder of information decides for the second time on the same case, on the occasion of a valid appeal, he is obliged to solve the case within 15 days.

If the holder of information does not act according to the Agency's instructions, in case of a repeated appeal, the Agency is obliged to notify the Offenses Commission about the failure to act.



## V. ANNUAL REPORTS

### Article 22

The official person of the holder of information is obliged to prepare an annual report on the implementation of the Law, submit it to the Agency by January 31 of the current year for the previous year and publish it on the website of the holder of information.

## VI. TRANSITIONAL AND FINAL PROVISIONS

### Article 23

This Instruction enters into force on the day of its publication in the "Official Gazette of the Republic of North Macedonia".

### Article 24

For non-compliance with the provisions of this Instruction, misdemeanour proceedings are conducted and misdemeanour sanctions are imposed by the Misdemeanor Commission in the Agency in accordance with Articles 38 and 39 of the Law.

### Article 25

With the entry into force of this Instruction, the Instruction for the Implementation of the Law on Free Access to Public Information, no. 03-674/1 from 1.12.2016.

No. 01-158/1  
March 4, 2020  
Skopje

Director,

Plamenka Bojcheva, m.h.